

**Chapter 249: RULES RELATING TO SMOKING IN PUBLIC PLACES****1. Purpose**

The Maine Center for Disease Control and Prevention has been authorized pursuant to 22 M.R.S.A. §§ 3 & 42 to enforce provisions of 22 M.R.S.A. §1541 *et seq.* regarding smoking in public places. These Rules are intended to clarify the requirements for compliance with this law.

**2. Definitions**

As used in these Rules, unless the context indicates otherwise, the following terms and phrases have the following meanings.

- a. "Dining and beverage service" means wait or self-service of food or beverages.
- b. "Eating establishment" has the same meaning as defined in 22 M.R.S.A. §2491, sub section 7.
- c. "Enclosed area" means a space between a floor and a ceiling that is demarcated on all sides by walls, windows, shutters, doors or passageways. A partition, partial wall or office divider is a demarcation of an enclosed area if it extends from the floor to within 4 feet of the ceiling or from the ceiling to within 4 feet of the floor.
- d. "Outdoor eating area" means a patio, deck or other property that is partially enclosed or open to the sky that is permitted for outdoor eating or drinking under the control of an eating establishment, as defined in 22 M.R.S.A. §2491, sub-section 7, as long as food or drink is served by the eating establishment to the public for consumption on the premises.
- e. "Public place" means any place not open to the sky into which the public is invited or allowed.
- f. "Smoking" includes carrying or having in one's possession a lighted or heated cigarette, cigar, or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

**3. Smoking prohibited in public places****a. Prohibition**

- i. Smoking is prohibited in all enclosed areas of public places and all rest rooms made available to the public.
- ii. Smoking is prohibited in an outdoor eating area if the outdoor eating area or any portion thereof is open and available for dining and beverage service.
- iii. Notification; request for compliance. An eating establishment with an outdoor eating area shall post signs in accordance with 22 M.R.S.A. §1543, notify its patrons of the prohibition on smoking in outdoor eating areas and request that all persons within an outdoor eating area comply with this section. A person may not smoke tobacco or any other substance in on or within 20 feet of a beach,

playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site.

#### **4. Posting signs**

Signs must be posted conspicuously in buildings where smoking is regulated by this chapter. Designated areas must have signs that read "Smoking Permitted" with letters at least one inch in height. Places where smoking is prohibited must have signs that read "No Smoking" with letters at least one inch in height or the international symbol for no smoking

#### **5. Retaliation Prohibited**

A person may not discharge, refuse to hire, discipline or otherwise retaliate against any person who pursues any remedy available to enforce the requirements of this chapter.

#### **6. Enforcement and Violations**

- a. Any violation of 22 M.R.S.A. §§ 1541-1547 or these Rules is a civil violation for which a fine of \$100 may be adjudged, except that a fine of up to \$1,500 may be adjudged for each violation in cases when a person engages in a pattern of conduct that demonstrates a lack of good faith in complying with 22 M.R.S.A. §§ 1541-1547 or these Rules. Each day any person is found smoking in a public place, or the owner fails to post or supervise the implementation of a smoke-free public place, shall constitute a separate offense.
- b. Citations for violations of 22 M.R.S.A. §§ 1541-1547 or these Rules shall be processed in accordance with Rule 80H of the Maine Rules of Civil Procedure. In accordance with that rule, citations shall be filled out and served upon any person who has allegedly violated 22 M.R.S.A. §§ 1541-1547 or these Rules, by either a representative of the Maine Center for Disease Control and Prevention and any other officer also authorized to enforce said statute or Rules.
- c. Enforcement actions for violations may be brought against any person smoking in a public place, the owner of a public place, or both.
- d. The Attorney General may bring an action to enforce 22 M.R.S.A. §§ 1541-1547 or these Rules in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of 22 M.R.S.A. §§ 1541-1547 or these Rules by a person or any person controlling such person.

#### **7. Severability**

Should any provision of these Rules be determined to be unconstitutional or unenforceable, such a determination shall not invalidate any other provision of these Rules.